194~~7~~ **File No.** S. DWR 2/47

Legal **DEPARTMENT**

A BRANCH

Dharwar Suit

Subject:—

Civil Suit No. 186 of 1945

G. K. Holayannavaer .... Plff.

Vs.

The Province of Bombay .. Deft.

Claim Rs. 301—

Re:- For possession of a site and for injunctions

P. 46
G

File No. S. DWR 2/47

Std. Secrt. Slip 26-B

S. DWR 2/47

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		.Claim Rs. 30/-	
1)	G.R.L.D. 8397 25th July 1949.	For Possession of a site Shaded red in sketch attached to the plaint, and for consequential injunction.	25
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No.L.C.Suit No.186/1945

In the Court of the Civil Judge Sr.Division,
at Dharwar.

Plff:-Gurappa Ballappa Koleyannavaer age 65, Lingayat, Agriculturist of Nagnoor Taluka Navalgund.

Vs.

Defts:-(1) Goudappagouda Lallangouda Balangouder, age 45 Lingayat Agriculturist of Sirur Taluka Navalgund.

(2) Balangouda Keligirigouda Banappagouder, Age 38 Lingayat Agriculturist of Sirur Taluka Navalgund

(3) the Province of Bombay

Claim Rs.30/-

The plaintiff states as follows:-

1. Description of plaint property:-

Open site in Sirur village Navalgund taluka shown in red in the map attached to the plaint approximate value Rs.25/-.

2. The portion towards the South cut of the suit site ie A B C D as shown in the map (page 57) was it first owned by one one Fakirgouda Rudragouda Patil of Sirur and in his enjoymen on 9-11-1922, the plaintiff purchased it from him. The eastern portion in the map i.e. E E H F J was first owned by and was in enjoyment of the Irayya Patdayya Kuppayyanaver . From him on 22-11-1940, plaintiff purchased the said eastern portion for Rs.100/-. Since the date of these purchases the said sites are in enjoyment and possession of plaintiff.

3. The site A J F X in the Accompanying map (page 57) was property of Government ownership. Defendant 1 purchased it on 25-2-1941 from the Mamlatdar Navalgund and passed a Kabulayat according to law.

4. Such being the state of facts, defendant 1 and 2 in collusion have encroached upon the site marked red in the accompanying map (page 57) , and are attempting to construct a wall thereon without any right and forcibly . Defendants have no right to do so. As the defendants have not stopped their illegal actions, the suit is filed for an injunction restraining them from building up the wall and for removal of the encroachment and for possession of the encroached area.

5. The Deft. 2 contends that he has purchased a portion of the suit site and has been interfering with plaintiff's rights in collusion with Deft. No.1, hence defendant 2 is added as a party to the suit.

5A) As the Court has decided that the Government is a necessary party to the suit, The Provincial Government of Bombay is added. Deft. 3 is really not connected with the suit in any way. But as Defendants 1 and 2 contended that deft.3 (Government) was a necessary party to the suit an issue was raised and the court held that defendant 3 was a necessary part hence defendant 3 is added.

5B). The notice of the suit has been served upon the Collect according to law and the acknowledgment of receipt of the notice from the Collector is attached.

6) .Cause of action:It arose about the 23rd or 24th of June 1945 when the defendants began to dig the foundation on site in red in attached map for constructing a wall. The plaintiff and defendants reside within the jurisdiction of this Court hence the suit is filed here.

7) Court fees:-Rs.25/- Court fees are paid on this amount

amountfor relief of possession of the site which is encroached upon by being dug for fundation as shown in red in the accompanying map. Rs.5/- Court of eight annas is paid on Rs.5/- the value of injunction. Rs.30/- for valuation of jurisdiction.

2. Plaintiff prays as follows:-A) Possession should be awarded of the site encroached upon by defendants 1 and 2 as shown in red in the accompanying map. B). A permanent injunction should be issued restraining defendants 1 and 2 from interfering with plaintiff's rights on the said site and from building wall. C). A mandatory injunction should be issued directing defendants 1 and 2 to undo any work done by them on the site and for possession fro them D) Court costs should be ordered to be paid. E) Other equitable reliefs should be granted.

True copy of plaint
Sd/-
Asst.Govt.Pleader, Dharwar.

5 43

Dharwar Civil Suit No.186 of 1945.

The suit is for possession of a site shaded red in the sketch at p.7, of file II and for injunctions against defendants Nos. 1 and 2 to abstain from interfering with the plaintiff's rights over that site and to demolish the wall built by them on that site. The suit was originally filed against defendants Nos.1 and 2 but they contended in their written statement that Government was interested in the site under dispute and was therefore a necessary party to the suit. The Court thereupon framed a preliminary issue and recorded a finding that Government was a necessary party to the suit (File II page 39.) The plaintiff thereafter gave notice purporting to be a notice to the Collector under section 80 of the Civil Procedure Code (File II p.1) and amended the plaint by adding Government as defendant No.3. On 16.1.1946 the plaint was transferred to the Court of the Civil Judge, Senior Division, Dharwar. The facts are as under:-

The defendant No.1 purchased at an auction sale held on 8.10.1940 a Government site in the gaothan of Sirur (Taluka Navalgund) at an occupancy price of Rs.15/-. The site purchased by defendant No.1 is marked X in the sketch dated 30th December 1941 (File II p.21). The sale was confirmed * on 4.1.1941 and on 28.2.1941 the defendant No.1 executed a Kabulayat in favour of the Mamlatdar of Navalgund.

+ File I p.16
+ do p.45

The plaintiff identifies the site purchased by defendant No.1 with the site marked AJFX in the sketch at page 7 of File II: He alleges that he purchased the site A.B.C.D to the south of AJFX from one Fakirgouda Rudragouda Patil on 9.11.1922 and the site DEHFJ to the east of AJFX from the Irayya Patdayya on 22.1.1940. He alleges further that the portion AMLHF shaded red is part of the two sites purchased by him and that the defendants Nos.1 and 2 have encroached upon it by constructing a wall.

From the Court's order at page 39 it appears

that the defendants Nos. 1 and 2 denied plaintiff's ownership over the disputed site and alleged that they were permanent lessees from Government under the Kabulayat of 28.2.1941, that the site belonged to Government and hence Government was a necessary party. In other words the defendants contended that the disputed portion formed part of the site purchased by defendant No.1 at the auction sale. The Court held that Government had some interest in the suit land since the defendant had to pay rent of eight annas perannum according to the Kabulayat and found that Government was a necessary party.

It seems that in this suit the dispute is principally between the plaintiff and defendants Nos.1 and 2. No relief is claimed against Government. The main issue will be whether the suit site is a part of the site granted to defendant No.1. Even if it is, it is not necessary for Government to take up a contentious attitude with the plaintiff, since the defendant No.1 has been made a permanent occupant of that site under [~~the defendant No.1 has been made a permanent occupant of that site under~~] the Kabulayat of 28.2.1941, which is in Form F of the Bom. Land Revenue Rules. The District Government Pleader may be instructed to file a statement informing the Court that Government does not desire to contest the suit and will abide by the Court's decision but that it should not be mulcted in costs.

R.M.L. 1/5/47

A.L.R. If defendants 1 & 2 fail in the suit will not Govt. be liable to refund the price of the land & I think Govt should support the defendants' title to the land. Pl reconsider.

R.L.A.

RK 2/5

S.A.S.

I suggest that the Collr may be requested to state whether the portion shaded red and marked A M C H F forms part & parcel of the site sold to defendant No 1 or not. This is now clear from the record

RK 2/5 DC 7/5 A.L.R.

Subd. with reference to the Collector's

reply overleaf.

KBB
21/7

A.S Please see the notes at p 13-14 ante and the Collector's reply overleaf. It appears therefrom that the site marked F H K J in the sketch at p 7 of File II forms part of the site granted by Government to defendant No 1 and not the site A M L K J belongs to the plaintiffs. If so, part of the

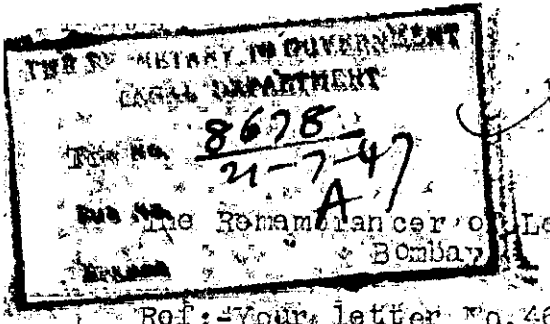
plaintiff's claim is true and dispute will be only with regard to the remaining strip of land marked F H K J which refer to A.L.R's observations on p 14. I submit that if the plaintiff succeeds and defendants Nos 1 & fail on the sub., Government may have to refund only the proportionate price of the portion marked F H K J but not the whole of it. If the site A M L K J did not form part of the land granted by Government to defendants Nos 1, the latter will have no claim against Government in respect thereof.

I therefore suggest that we may instruct the Asstt Government Pleader, to file a written statement simply denying the plaintiff's title to the site marked F H K J and putting the plaintiff to strict proof of his claim.

RLA
24/1/47

ALR I agree.
RLA — 25-1.

Subject:-Lands:Shirur (Taluka Navalgund)-A
Dispute regarding the ownership of
Civil suit in the matter of ...)



No.L.A.N.-47
Dharwar, 14/7/1947.

The Remembrancer of Legal Affairs
Bombay

Ref:-Your letter No.4688 of 7-5-1947.

Part of the portion shaded red, that runs from North to South, and marked F K I J (Sketch on page 7 File II) is out of the site granted to defendent No.1, Mr.Goudappagouda; and the remaining part running from East to West, and marked A F I K J is, out of the area, claimed as his, by the plaintiff Mr. Koleyannavar. The Mamlatdar's report in this connection may please be perused.

The papers of the case in 2 files accompany.

for Collector of Dharwar

plaintiff's claim is true and dispute will be only with regard to the remaining strip of land marked F H K J With regard to A.L.R's observations on p 14. I submit that if the plaintiff succeeds and defendants Nos 1 & 4 fail on the sub. Government may have to refund only the proportionate price of the portion marked F H K J but not the whole of it. If the site A M L K J did not form part of the land granted by Government to defendants No 1, the latter will have no claim against Government in respect thereof.

I therefore suggest that we may instruct the District Government Pleader, to file a written statement simply denying the plaintiff's title to the site marked F H K J and putting the plaintiff to strict proof of his claim.

RLL
24/7/47

ALR I agree.
RLA ← 25-7.
RR 25/7

L.C.S.No. 186 of 1945. 11 3

In the Court of the Civil Judge, Sr.Dn.Dharwar.

Plff:-Goolappa Kallappa Holiyannaver of Nagnoor Tal: Navalgund.

Deft:-The Province of Bombay. Vs.
(3)

The following is the written statement on behalf of the Deft No.3 (Government).

1. The plff's suit is bad and not maintaineable for want of a proper notice under section 80-C.P.C.-Niether the cause of action nor reliefs claimed against Government are stated in the said notice dated 7-8-1946.

2. The title claimed by plff to the suit property and in particular to the sight described as F.H.K.J. in the map attached to the plaint, is denied. Neither plff nor his predecessors ~~entitlex~~ in title were ever in enjoyment and possession ~~f~~ of the said property. Plff is put to strict proof of his claim thereto.

3. The allegations in para 2 of the plaint are not admitted. The sales referred to therein and relied upon by plaintiff but not admitted by this deft do not convey any title to the plaintiff in respect of the suit properties.

4. It is submitted that the sight described as F.H.K.J. in the map attached to the plaint forms part of Government open sight measuring 52' by 36' . It was sold by Govenment to Plff under the provisions of the Land Revenue Code at a public auction dated 4-1-1941 and the plff is in enjoyment and possession thereof.

5. The Plff is not entitled to the reliefs of the declaration and injunction against this Deft.

6. In any event it is submitted that plaintiff's usit - should dismissed with costs.

I, ..Govt.Pleader, sate on solemn affirmation that the contents in the above paras are true according to the information received and believed to be correct.

Dharwar.

L.A. (New) - 7312 dated 17/1/1948
No. 5(1)

2980

Cop. 5/10/-
S.C. 1/ 7/-
Comp. 1/ 7/-
S.C. -/ 6/-
Pap. -/ 2/-
9/ -/-

Copy was applied for in person on 16/4/1948

Sd/- H.S.Hunshikatti,
Clerk of the Court.

It was ready for delivery on 23rd April '48.

Sd/- H.S.Hunshikatti,
Clerk of the Court.

It was delivered on 28th April '48.

Sd/- H.S.Hunshikatti,
Clerk of the Court.

Received on 30/6/1945.
Registered on 30/6/1945.
Decided on 12/4/1948.

Duration 2 years 10 months 12 days.

In the Court of the Civil Judge, Senior Division, Dharwar at Dharwar.

Pleaders.

L.C. Civil Suit No.186 of 1945.

Mr. Jamkhandi.

Goolappa Kallappa Holiyannavar, age 65, caste Lingayat, Occupation Agriculture of Nagnoor, Taluka Navalgund. .. .. Plaintiff.

against.

Mr. A.S.Patil. for defts 1 & 2

1. Goudappagouda Mallangouda Balangoudar, age 45, caste Lingayat, occupation Agriculture of Shirur Taluka Navalgund.

Mr. K.K.Patil, for deft. No.2.

2. Balangouda Melgirigouda Bannappagoudar, age 38, caste Lingayat, occupation agriculture of do

Govt Pleader for Deft No.3.

3. The Province of Bombay (Amended as per Ex.33). defts.

claim Rs.5/-

The plaintiff sues to recover possession of the suit property encroched by defts 1 and 2 and that shown in the sketch map attached to the plaint in red pencil and to get a permanent injunction against the defts 1 and 2 so that they may not obstruct the plaintiff in his possession of the suit property and so that they may not obstruct a wall etc on the encroached portion, to get possession of the suit property after removing the work if any, done by defts 1 & 2 therein at their expense and to get costs.

He states that he has attached to the plaint a sketch map showing the properties of the parties, that the site A.B.C.D. as shown therein belonged one Fakirgouda Rudragouda Patil of Shirur and he was in possession of the same and he sold the same to plff on 9/11/1922, that the site towards the east and shown as D E F G belonged originally to one Virayya Muppanavar and he was in possession of the same and the plaintiff purchased the same on 2/11/1940 for

Rs.100/- and thereafter, he is in possession of th same as owner, that the remaining property shown in the map belonged to Government and that it was sold to deft No.1 by the Mamlatdar Navalgund for Government on 28/2/1941 and defendant No.1 executed a Kabulayat to Government, that defendants 1 and 2 joined hands and have encroached upon the portion shown in the map, to cause loss to plaintiff; that the defendants 1 and 2 have got no right to do so; that they are intending to construct a wall there; that therefore, he has filed this suit; that he learns that defendant No.2 has purchased a portion of the site taken by defendant No.1 and therefore, he is added as a party, that deft No.3 has not interest in the suit property defts 1 and 2 contended that deft No.3 was a necessary party and the court ordered that he was a necessary party and therefore, he is added as aperty, that he gave a notice to deft No.3 and there afe:r h: has added him as a party. Defts 1 and 2 have stated at Exhs.18 and 20 that the plaintiff has not given the necessary details regarding the suit property in the plaint, that the map prepared by the plff is not correct and it is imaginary, that the plff should be asked to give the necessary details reagarding the property. that the site A B C D never belonged to Fakiragouda and he was never in possession of the same, thatthe plaintiff is the father-in-law of Fakirgouda and they have joined hands and they are saying that the site belonged to Fakirgouda in order to have that property, that the documents are hollow, that the plff and Fakirgouda were never in possession of that property, that the property belonged to Government and it is an open site, that they do not admit the facts stated regarding the site D E F G, that false documents are prepared, that Fakirgouda had no right to sell the property A B C D to plaintiff, that the measurements stated in the deed produced by plaintiff are wrong, that in the Kabulayat executed by defendant No.1 to Government defendant No.1 stated the boundaries dictated to him by Fakirgouda, that defendant No.1 was misrepresented by Fakirgouda and the plff cannot take advantage of the same, that defts No.1 and 2 are doing work in their property and they have not encroached any property of the plff, that plff obtained an interim injunction by misrepresenting facts to the Court, that the plff is not the owner of the property and he has filed the suit to cause loss and trouble to them, that plff filed

filed L.C.Suit No.13 of 1942 regarding the same property and it was dismissed and therefore, the plff cannot file a second suit which is barred by res judicata, that as plff and Fakirgouda were never in possession of the property, the plff is not entitled to an injunction and possession, that the suit be dismissed with costs. Defendant No.3 states at Ex.45 that the suit is bad for want of a proper notice under section 80 of the C.P.C. that in the notice the cause of action against Govt and the reliefs claimed are not stated. that the title claimed by plff to the suit property and in particular to the site described as F S K J in the map attached to the plaint is denied, that the plff and his predecessors-in-title were never in possession and enjoyment of the suit property, that the sale deeds relied on by plff are not admitted and they do not convey any title to the plff regarding suit properties, that the site F.S.K.J. was Government property and it measured 52 feet by 36 feet and it was sold by Government to Deft No.1 under the provisions of the Land Revnue Code at a public auction on 4/1/1941 and defendant No.1 is in enjoyment and possession of the same. that the suit be dismissed with costs

The plaintiff has given the details, regarding the property claimed by him at Ex.27 A. On these pleadings, the following issues were framed at Exh. 27:-

1. Does plaintiff prove his title to the alleged encroached portion ?
2. Do defendants prove that the boundaries mentioned in the Kabulayat dated 28/1/1941 were incorporated by the plaintiff's son-in-law through misrepresentation?
3. If so, is the said plea of any use as against the plaintiff ?
4. Is the Government a necessary party to the suit ?
5. Is the plaintiff entitled to an injunction ?
6. Is the plaintiff entitled to possession ?
7. What decree.?
8. Is the notice given to defendant No.3 proper ?
9. Is the suit barred under Order 9 rule 9 C.P.C ?

Answers: 1:- No. 2:- Yes. 3:- Yes. 4:- Yes. 5:- No. 6:- No. 7:- As given below. 8:- Yes. 9:- No.

Reasons :-

The statement of Gulappa (Ex.65) and Fakirgouda (Ex.71) are recorded for plff and those of Goudappangouda (Ex.72), Nilappagouda (Ex.74), Sankangouda (Ex.75), Basappa (Ex.76) and Balangouda (Ex77) for defendants 1 and 2 and that of Raghavendra (Ex.81) for defendan No.3.

Issues Nos.1 to 3:- The plff has filed the suit stating that the portion marked in red in the sketch map Ex.66 attached to the plaint belongs to him and that defendants 1 and 2 have encroached upon the same and that they are intending to construct a wall there and therefore, he prays for removing the work done by defendants 1 and 2 at their costs and for obtaining possession of the encroached portion and he prays for a permanent injunction against the defend ants 1 and 2 so that they may not obstruct him in the possession and enjoyment of the suit property. The plff says that the site A B C D is purchased by him from his son-in-law Fakirgouda to whom the pro perty belonged and who executed a sale deed to him on 9/ 1/1928 for Rs.100/- and that sale deed is at Ex.87. The plff further says that the site D E F J is purchased by him from Irayya Gangayya & Radayya on 22/11/1940 for Rs.100/- and the deed is produced in the case at Ex.88. He further says defendant No.1 got the property in between these properties from the Government in the year 1941 and that defts 1 and 2 were encroaching upon the property shown in red in the sketch Ex.66 attached to the plaint. The defendants have stated that the the plaintiff is not the owner of the suit property and that he was never in possession of the same and that Fakirgouda never owned any prop rty as st ted by plff and that Fakirgouda was the son-in-law of the plff and that they have joined hands with the view to get the property wh ch belonged to Government. A co missioner was appointed to prepa e a map regarding the suit property and the map and report prepared by him are at Ex.13, 28 and 29. Before the Government gave property to defendant No.1, there was a map prepared and it is at Ex.90 and the order passed by the Assistant Collector is t Ex.91. Ex. 89 is the application made by defendant No.1 to the Mamlatdar Navalgund to grant the site to him and Ex.30 is the copy of the Kabulayat given by defendant No.1. It is stated in that application that towards the south the site claimed was the site of Fakirgouda Rudragouda Patil. In the Kabulayat a copy of which is produced at Ex.30, deft No.1 stated that towards the south of the site there

was the house site of Fakirgouda Patil. Defendant No.1 has stated that these descriptions were there as Fakirgouda misrepresented him and as has adduced evidence in the case to that effect. Fakirgouda is the officiating Patil of the village for about 40 years. Fakirgouda stated at Ex.71 that the site was acquired by his grand-father Gurangouda 60-70 years ago by Vahiwat. He has not produced any document to show that his family got the property by any deed. Fakirgouda filed a suit against his uncle in L.C.Suit No.838/1907 in this court and therein the suit property was not mentioned. It was a suit for partition of the joint family property. If so, the suit property which is claimed by Fakirgouda was joint family property and it ought to have been mentioned in that suit. But that is not so done. A copy of the decree is at Ex.97. Fakirgouda stated for the first time in 1922 that the site belonged to him and he executed a sale deed regarding the property to plaintiff who was his father-in-law. The plaintiff is the resident of Nagnur which is at a great distance from Shirur where the suit property is situated. The plff also resides at Dharwar. The plff says that he owns lands at Shirur and he was keeping fodder etc in the property purchased by him from Fakirgouda and Irayya. Fakir-gouda also says the same thing. No extracts from the records of rights or sale deeds are produced to show that the plaintiff owns lands at Shirur. The plaintiff stated that the lands belonging to him at Shirur were cultivated at home and that he had bullocks and that he kept them in a portion of the site purchased by him. No extracts from the Cattle Census Register are produced by plff to show that he had any cattle at any time at Shirur. Admittedly, the plff owns no house at Shirur. It is stated that there was a house in a portion of the property purchased by plff from Irayya. But the sale deed obtained by Irayya is in in the year 1940 and the plff has not shown that he had anything to do with that site before the year 1940. He never executed any rent notes to Irayya regarding that property. There are the statements of the plff and his son-in-law Fakirgouda recorded for plff and there is no other independent evidence adduced for plff to prove that the plff was ever

ever in possess on of any of the properties purchased by him. Fakirgouda has stated the distance between the site of deft No.1 and that of the Chawdi is 60 or 70 cubits and that there is a road between the Chawdi and the plff's site and that the breasth oc the road was 40 or 50 cubits. The evidence shows that the distance between the chawdi and the site of deft No.1 is not much and if that is a fact as stated by Raghavendra Exx81 Ex.81 and as seen from the map prepared by him, there would be no site belonging to the plff between the site belonging to deft No 1 and the Government chawdi and the Government road. Defts 1 and 2 and their witnesses have stated that the plff and Fakirgouda were never in possession of the suit property at any time. Ex.98 is a map prepared by the Circle Inspector and it shows the correct statement of the facts. The Government gave a portion of the property close by and one Basapp has xxxdux produced the Patta at Ex.92 and it dated 27/4/1889. It does not show that Fakirgouda and his ancestors ever owned any prop erty close to that site. The plff has admitted that the property sold to him by Irayya and his sons consisted of two parts the first part was of property taken up by Irayya's xnxx ancestor Shankarayya from Government and second part consisted of the ancestral property. The plif has not been able to show as to what property was taken by Shankarayya from Covernment and as to what was the property which was ancestral. Ther is also no definite and disinterested evidence adduced for plff to prove that the plff and his predecessors-in-title were ever in posse ession of the suit pro erty. I, therefore, believe the evidence for defrs and disbelieving that for the plffs. find issue No.1 in the negative, issue No.2 in the affirmative and that the plea is of use against the plff as it is Fakirgouda who is fighting out the litigation and he is interested in the suit property. This is because the plaintiff admits that Fakirgouda himself executed the sale deed Ex.88 and sent that to him and that he was not present when it was executed. Fakiragouda is the resident of Shirur and the plff rarely goes to that village. Ther8 Fakirgouda is interested in getting the site and he created the docume t to suit his own purpose.

Issue No.4. Mr.Telsikar the then Joint Civil Judge Junior Division has given a finding on that issue below Ex.27 and he has stated that Government is a necessary party. Therefore, I find the issue in the affirmative.

Issues No.s 5 and 6:- The plff is not the owner of the suit property and he was never in possession of the same and therefore I find that he is not entitled to the injunction sought and that he is not entitled to possession.

Issue No.8:- Deft No.3 has produced a copy of the notices given by plff with a list Ex.46. The plff has also produced a reply with Ex.86 received by plff from the Collector, Dharwar It is not shown for deft No.3 as to how the notice is not proper therefore, I find the issue in the affirmative.

Issue No.9:- The plaintiff filed Civil Suit No.18 of 1942 against the present defendant No.1 and one Nilangouda stating that they were obstructing him for going into the property described in that suit. That suit was disposed of and thereafter a miscellanious No.21/43 was filed in which the suit was restore to file. Thereafter the plaintiff remained absent and the suit was dismissed. This was on 6/12/1943. Thereafter, the plff has filed the present suit. It is stated for defendants that the present suit is barred under Order 9 rule 9 of the C.P.C. From Exs.94 and 95 which are copies of the plaint and issues in the last suit and the plaint Ex.1 in this suit, it is seen the causes of action for two suits were different and defendant No.1 is common to the two suits and there are other parties who are not common. Therefore. I find that the suit is not barred under Order 9 rule 9 of the C.P.C.

O R D E R.

The suit is dismissued. The plaintiff shall pay one set of costs to defendants 1 and 2 and another set to defendant No.3 and he shall bear his own.

12/4/1948

Sd/- B.A.Chaugule,
Civil, Judge, S. Dn.

Typed by

The date on which the copy was applied in person — 16th April 1948.

Sd/- H.S. Hemeshikalli
Clerk of the Court

The date on which it was ready for delivery — 23rd April 1948.

Sd/- H.S. Hemeshikalli
Clerk of the Court.

The date on which it was delivered
28th April 1948.

Sd/- H.S. Hemeshikalli
Clerk of the Court.

ಮಾನ್ಯರೇ,

ಈ ಕೆಳಗಿನ ಅಭ್ಯರ್ಥಿಗಳು ಕೆ.ಎ.ಎಸ್. ಪರೀಕ್ಷೆಯಲ್ಲಿ ಉತ್ತೀರ್ಣರಾಗಿದ್ದು, ಇವರಿಗೆ ಸಹಾಯಕ ಆಯುಕ್ತರು ಮತ್ತು ಉಪವಿಭಾಗಾಧಿಕಾರಿಗಳು ಹುದ್ದೆಗಳಿಗೆ ಆಯ್ಕೆಯಾಗಿರುವುದರಿಂದ ಇವರಿಗೆ ಸಹಾಯಕ ಆಯುಕ್ತರು ಮತ್ತು ಉಪವಿಭಾಗಾಧಿಕಾರಿಗಳು ಹುದ್ದೆಗಳಿಗೆ ಪೋಸ್ಟಿಂಗ್ ಆದೇಶ ನೀಡಲು ಕೋರಿದೆ.

ಈ ಕೆಳಕಂಡ ಅಭ್ಯರ್ಥಿಗಳಿಗೆ ಪೋಸ್ಟಿಂಗ್ ಆದೇಶ ನೀಡಲು ಕೋರಿದೆ):-

Sd/- H.S. Hanchinal

15/4/1969.

Sd/- [illegible]

Sd/- V.G. [illegible]

Compared by

Sd/- H.S. Hanchinal

Compared by

25-7-49

Suits.

Dharwar.

For Possession of a site shaded red in the sketch attached to the plaint and for consequential injunction.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No.8397
Bombay Castle, 25th July 1949.

Letter from the Collector of Dharwar, No.L.A.W.-476, dated the 28th March 1947.- Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

In the Court of the Civil Judge, (Senior Division), Dharwar.
Civil Suit No.186 of 1945.
Goolappa Kallappa Holiyannavar. ...Plaintiff.
Vs.
The Province of Bombay and others. ..... Defendants.

Endorsement by the Commissioner, Southern Division, No.L.S.T.372 dated the 7th April 1947.-Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 7818, dated the 29th July 1947.-Sanctioning the defence of the suit.

Letter from the District Government Pleader, Dharwar, No.559 dated the 28th May 1948 stating that the suit noted in the margin was decided in favour of Government on 12th April 1948.

Letter from the District Government Pleader, Dharwar, No.875, dated the 24th August 1948.- Forwarding uncertified copies of judgment and decree wherein the following order was passed :-

" The suit is dismissed. The Plaintiff shall pay one set of costs to defendants 1 and 2 and another set to defendant No.3 and he shall bear his own."

Letter from the District Government Pleader, Dharwar, No.623, dated the 16th June 1948, stating that plaintiff in the suit noted in the margin has filed an appeal No.127 of 1948 in the Court of the District Judge, Dharwar and requesting sanction to the defence of the appeal.

Letter from the Collector of Dharwar No.L.A.W.476 dated the 23rd June 1949 requesting sanction to the defence of the appeal No. 127 of 1948.

RESOLUTION:- Sanction is accorded to the defence of the First Appeal No.127 of 1948 in the Court of the District Judge, Dharwar on the favourable grounds contained in the judgment of the Civil Judge,

P.T.O.

27 .7

Civil Judge, Senior Division, Dharwar.

By order of the Governor of Bombay,

original

R.M.MEHTA.
Assistant Secretary to Government.

To

The Collector of Dharwar,
The Commissioner, Southern Division,
The District Government Pleader,
Dharwar.

Sale certificate for signature

23/7

Issued
25/7

A.S.
27.7

No. 185 Dated 14 Feb 1950,
Office of the Dist Govt Pleader,
Dharwar.

To

The Remembrancer of Legal Affairs,

Bombay

Sub : Civil Appeal No.187 of 1948 in L.C.S.No. 186 of 1945 of Dharwar Court.

S.P.L.C.No.3317 dated 13-7-48.

Sir,

The Civil Appeal No.187 of 1948 was allowed by the District Judge on 31-1-1950. He held that the Government is not a necessary party to the suit in as much as " the Government were impleaded as Deft No. 3 under the order of the Court ". The order of the District Judge is as follows :-

> "The appeal is allowed. The decree of the Lower Court is set aside. Defts Nos.1 and 2 are ordered to remove portions of wall erected by them on the sites A K L M and F H K J as shown in Exh.66 and to hand over vacant possession of the same to the plaintiff. If defendant Nos.1 and 2 fail to do so, the plaintiff is at liberty to get possession of them through Court at the costs of defendant Nos.1 and 2. A permanent injunction should issue against defendants Nos.1 and 2 not to interfere with the plaintiff's possession of the two areas. The plaintiff should get the costs of the suit and of the appeal from defendants Nos.1 and 2 who should bear their own through out. Deft. No.3 who had partly supported defendants Nos.1 and 2 in the lower Court and had also supported them in the appeal should bear their own costs through out."

2781
17.2.50

The interest of the Government involved in this appeal is not so important as to file an appeal from the judgement of the District Judge, However Government may file ~~xxxxxxxx~~ cross-objections if defendants Nos.1 and 2 file any appeal in the High Court as it is very likely that they may file such an appeal in view of the fact that it is they and not Government who are really affected by the order of the District Judge.

An uncertified copy of judgement accompany for perusal.

Yours faithfully,

R. V. Jathar

for Dist. Govt. Pleader.

J2781
17-2-50.

Submitted with hps. (S. Owen 2147)

22.2
A.S.

Please see the rules on p 11 and p 24-25 with fib for facts of the case. There was encroachment and possible perjury and fact was made a result under the rules. The fact was dismissed by the trial court but on appeal the civil courts agreed by the trial court. Agreed attached with the to Ep (enclosed) that was a not a fit case for appeal. The result was dismissed on + recorded.

RC

RC & R
22/2

31

In the District Court of Dharwar

At Dharwar

Appeal No 127 of 1948 from decree in

Civil Suit No 186 of 1945 of the court of Civil Judge

Senior Division of Dharwar (Mr. B.A. Chaugule)

pleader

V.G.Jamakhandi — Goolappa Kallappa Holeyannavar of Nagnoor Taluka Navalgund — Appellant-plff

against

A.S. Patil — 1. Goudappagouda Mallangouda Balangoudar of Shirur taluka Navalgund

K. Patil — 2. Balangouda Melgirigouda Banappagoudar of Do.

Respondents defts

Assistant Govt. Pleader V.Jathar — 3. The Province of Bombay

Claim - 5/-

Judgment

This is an appeal by the plff against a decree in L.C.Suit No. 186 of 1945 passed on 12-4-1948 by the Civil Judge, Senior Divison, Dharwar.

2. The suit as originally filed on 30-6-1945 was against defts Nos. 1 and 2. The allegations in the plaint

were that the plff was the owner of two open spaces A D C B AND J F E D as shown in thex sketch (Ex.66) appended to the plaint, that deft No.1 had taken a lease from Government of an open space A J F X as shown in the sketch and that deft No.2 had later on purchased a portion of the site from deft No.1 and defts Nos. 1 andx 2 in collusion were encroaching over the plff's land by trying to build a wall on those portions. The encroached portions were shown in red as A M L K and F H K J in the sketch (Ex.66). It was alleged that defts Nos. 1 and 2 were not entitled to the strips which were the properties of the plff and the defts Nos. 1 and 2 should be restrained byx a permanent injunction. He had given details as to how he had obtained the open spaces. He had purchased A B C D from one Fakirgouda under a sale deed dated 9-11-1922 and that he had purchased F J D E from one Irayya and his sons,who were its owners,under a sale deed dated 22-11-1940 . Deft No.1 had taken on lease the open space A J F X from Government,at an auction held on 28-2-1941 and taking advantgge of it he was trying to encroach upon thex plff's sites.

3. Defts Nos.1 and 2 by their written statement (Ex.18) denied the correctness of the map produced with the plaint and asked for further particulars. They claimed that the open space A B C D never belonged to Fakirgouda from whom the plff claimed to have purchased it and they asserted that the property was that of the Government. Defts Nos. 1 and 2 claimed that under the lease taken by deft No.1 he was entitled to the areas which were originally alleged by the plff to have been encroached by the defts. It was stated that Fakirgouda was the son-in-law of the plff and also the officiating Patil of the village and he had made a false pepresentation to deft No.1 that the open space A B C D was his and he had midled deft No.1. They denied that the plff had at any time been in possession of the area which is alleged to have been encroached. It was contended that as the plff was claiming what was the property of the Government the Government was a necessary party. The plff gave more particulars about the encroached area by a reference to Ex.29 which is a map prepared by a commissioner who had been appointed by the Court for the purpose of drawing up a map after a local inspection. Issues were framed at Ex.27. Issue No.4 was whether the Government was a necessary party

That issue was tried as a preliminary issue and the Civil Judge Junior Division gave a finding on 27-7-1946 that Government was a necessary party (Vide orde below Ex.27). Thereafter the plff gave a notice to the Government under section 80 C.P.C. and amended th plaint by adding the Government as deft N o.3.

4. The Provincial Government by their written statemen t (Ex.45) contended inter alia that the str marked by the letters F H K J in Ex. 66 formed part of the Government open site and it measured 52 feet by 36 feet which was sold by the Government to defr N at a public auction held on 4-1-1941 and that deft No. was in possession thereof. The Government made no claim in respect of the strip A K L M as part of the Government open land - an allegation which had been made by defts Nos. 1 and 2 and as a result of which the Civil Judge, Junior Division, had held that the Government was a necessary party as, in his view it was advisable that the dispute should not be decided behind the back of the Government. All that the Government stated in regard to the plff's claim of title and possession wa that the title of the plffs and his predecessor was n admitted and that the plff was to be put to strict proof of his title. A defence was also made that the notice under section 80 C.P.C. was not a proper one.

5. The issues framed in the lower court and the findings given on them by the learned Civil Judge are as below :-

1. Does plff prove his title to the alleged encroached portion ?
2. Do defts prove that the boundaries mentioned in the kabuliyat dated 28-2-1941 were incorporated by the plff's son-in-law through misrepresentation ?

3. If so, is the said plea of any use as against the plff ?

4. Is the Government a necessary party to the suit?

5. Is the plff entitled to an injunction?

6. Is the plff entitled to possession ?

7. What decree ?

8. Is the notice to deft No.3 proper ?

9. Is the suit barred under Order 2 rule 2 C.P.C.?

Findings :-

1. No. 2. Yes. 3. Yes. 4. Yes.

5. No. 6. No. 7. As in the final order.

8. Yes. 9. No.

6. The issues which arise for decision in the appeal are:-

1. Whether the plff proves his title to and possession of the strips A M B K and J K H F shown in red in the map (Ex.C6) ?

2. Do the defts prove that the two strips were part of the area sold by the Government to deft No.1 on 28-2-1941 for which deft No.1 had passed kabuliyat (Ex.30) ?

3. Is the Government a necessary party to the suit ?

4. Is the plff entitled to the injunction against defts Nos. 1 and 2 ?

My findings are:-

1. Yes. 2. No. 3. No. 4. Yes.

Reasons

7. I will first deal with the contentions raised by deft No.3. I have already pointed out above that on the plea raised by defts Nos. 1 and 2 in the written statement that the open space A B C D belonged to the Government the learned Civil Judge, Junior Division held that the Government was a necessary party as he was of the opinion that it was not advisable that the dispute should be decided in the absence of the Government. The plff's case was that the strip A K L M over which

defts Nos. 1 and 2 were committing an act of encroachment was part of the land which he had purchased in 1922 from Fakirgouda under the sale deed (Ex.88) dated 9-11-1922. Deft No.3 made no claim to this area and I should think that they had acted properly in not making such a claim. The sale to deft No.1 by a public auction on 23-2-1941 was the result of an application which deft No.2 had made to the revenue officers. That application was enquired into by the Mamlatdar whose report is Ex.91. At that time the Mamlatdar had caused to be drawn a sketch showing in red pencil the land asked for by deft No.2. That map is Ex.90. It appears that deft No.2 had applied for the open space which included the open space which was later on purchased by him and also the adjoining site which had been given to one Sankayya in lease by Government and which was purchased from Sankayya's heirs Irayya and his sons on 12-11-1940 by the plff under a sale deed (Ex.87). The Mamlatdar did not recommend the sale of that portion. The Assistant Collector then sanctioned the sale by a public auction of the plot shown by the letters A B F E on the map (Ex.90). The dimensions are shown to be 52 feet x 36 feet. It is significant to note that to the south of the whole of the area shown in red pencil and which now corresponds to A B C D in the map (Ex.66) was described to be the back yard of Fakirgouda and not Government land. The Government did not therefore claim this area as theirs at the time when the auction sale took place nor have they done subsequently in spite of the assertions made by defts Nos. 1 and 2. The Government had parted with the whole of the area by first leasing out a portion on the western side to Sankayya in about 1898 and had sold the remaining eastern portion to deft No.1 in 1941. The leases were under the Land Revenue Code permanent leases which the lessee could alienate and the only liability

of the holder was to pay the rent. It is therefore obvious that the Government are not at all interested in the J K H F shown in red in Ex.66 and the plff has claimed no relief against the Government. I therefore think that the Government was not at all a necess-ary party ~~party~~ to the suit. As defts-Nos. 1 and 2 intended to rely upon their purchase of the open space as being inclusive of the encroached portion under the Kabulayat, it is for them to prove that the strip was included in the area purchased by them. The Government were impleaded as deft No.3 under the order of the Court. A copy of the plaint along with the substance of the Court's order was sent as a notice under section 80 C.P.C. and the same is produced with Ex.46. After the period of the notice was over the suit was filed in the Court of the Civil Judge Senior Division, Dharwar. I therefore agree with the learned Civil Judge that deft No.3 have not shown how the notice was not a valid one.

8. Apart from the admission of his vendor's title in respect of the area A B C D in Ex.66 by Government as can be seen from the map (Ex.90), the plff has produced documentary evidence as to how he came to the owner of it. Ex.88 is the sale deed dated 9-11-1922 for this area passed by Fakirappa to the plff. Fakirgouda who has given evidence for the plff at Ex.71 stated that he had also mortgaged this site to one Ningappa Shiryannavar and had produced a stamped but unregistered deed of mortgage dated 18-10-1916. It purports to be a mortgage for Rs.98. The lower court has not considered this document probably because the same ~~xxx~~ is not a registered document. No doubt no suit could have been filed on the strength of the document to recover the mortgage amount by the mortgagee. But I should think that it can be admitted in evidence for the purpose of showing that Fakirgouda the vendor of the plff had dealt with this area as his own as far back as 1916. The learned Civil Judge disbelieved the evidence of the Plff (Ex.65) and that of Fakirgouda (Ex.71) as regards the plff's alleged possession of this land prior to the suit on the ground that the plff was a resident of Nagmur and that the plff had no house or land or bullocks of his own at Shirur to

make it probable that he might have made use of this open space for the purpose of stacking fodder and fuel on it. His observations on this point are as follows:-

> "The plff is a resident of Nagnur which is at a great distance from Shirur where the suit propert is situated. The plff also recides at Dharwar. The plff says that he owns lands at Shirur and he was keeping fodder etc in the property purchased by him from Fakirsgouda and Irayya. Fakirgouda also says the same thing. No extracts from the record of rights or sale deeds are produced to show that the plff owns lands at Shirur. The plf stated that the lands belonging to him at Shirur were cultivated at home and that he had bullocks and that he kept them in a portion of the site purchased by him. No extracts from the cattle census register are produced by the plff to show that he had any cattle at any time at Shirur. It Admittedly, the plff owns no house at Shirur."

The learned Civil Judge appears to have overlooked the admissions made by deft No.1's witness Neelappagouda Ningangouda (Ex.74). He stated in his cross-examination as follows:-

> " The plff has purchased lands at Shirur 30 years ago.....The plff was not tying his cattle in the building of Irayya.....The plff was tying his cattle in the house of Fakirgouda and he was keeping his stock in the site of Fakirgouda. That site is towards the west of his old house. Fakirgouda was tying his own cattle in the new house. Before the new house Fakirgouda was tying his cattle in ~~Yakkyyatx hxxxx~~ the old house and the plff was tying his cattle in Totayya's math in the village. That math or building has fallen 10 or 15 years ago."

It is therefore clear th t the plff did own lands at Shirur village, that he had also cattle of his own at Shirur village but the defts wanted to assert that the plff's allegation that he used to stack his fodder and tie his cattle on the suit sites was not correct but just he used to have his effx fodder and cattle in Fakirgouda's house. Similarly deft No.2's witness Sankangouda Siddangouda (Ex.75) who was one of the panchas at the panchnama made at the time when the auction sale was held by the Mamlatdar in favour of deft No.2 admitted that the plff had purchased about 80 acres of land at Shirur about 30 years ago and the plff was tying his cattle in another house of Fakirgouda and was keeping his hay on the site of Totayya Swami. When the Government have not claimed the site A B C D in Ex.66 as theirs and there is evidence that from 1916 onwards Fakirgouda was using this land as his own and had sold it to the plff under the sale deed (Ex.88) on 9-11-1922 long before deft No.2 purchased the adjoining open site in 1941 from Government the plff cannot be called upon to prove how his vendor had originally acquired title to it before 1913. It is not defts Nos. 1 and 2's case that the site in dispute belonged to anyone else than the Government. The learned Civil Judge relied in giving a finding against the plff on the contents of a compromise decree in L.C. Suit No. 338 of 1907 (Ex.97). That was a suit filed by Fakirgouda against his uncle in which he had alleged that his uncle had got his name entered to the ancestral lands and was in possession of the lands as also a house and also movable property, that he had a one-half share and that he should given his share by a partition. It appears to have been contended before the lower court that as this was a suit for a general partition and as the site in dispute in this suit was not included the site could not have been the property of the family in 1907. But such an inference will not be justified. It may be noted that the suit was filed by Fakirgouda as he wanted a share in certain movable and immovable property of the family in the hands of his uncle. Ultimately the suit was compromised. If Fakirgouda had already been in possession of the suit site he need not have included in his suit for partition. Fakirgouda in his evidence (Ex.71)

stated that his grand-father Gurangouda had been in possession of this site and that the family was in possession of it for the last 60 or 70 years. There was a building on the site but later on the building fell down in about 1898. As the Government have not claimed this site as theirs I should think that the evidence which the plff has produced in respect of the area A B C D as in Ex.66 should be considered sufficient to establish his title to and possession over it.

9. The defts have attempted to explain away the mention of this area as that of Fakirgouda shown in the map (Ex.30) as also the Jamabandi (Ex.30) which deft No.1 had passed in favour of the Mamlatdar by alleging that when deft No.1 made the application for the site to the revenue officers Fakirgouda who was the Police Patil had made a false representation to him that the site belonged to him and therefore in describing the site he had described the southern boundary of the plot as the plot of Fakirgouda. In his evidence (Ex.71) deft No.1 admitted that he had himself written the application, that he is the person who had signed the application as also the jamabandi in English, that after Fakirgouda told him that he would show his title deeds and before he purchased the site he did not again ask Fakirgouda for his title deed nor did he make any enquiry between the two intervals. He further stated that as he thought that the site was a Government site he took no action and even at the auction he did not tell the Mamlatdar that the suit site was a Government site and therefore the southern description of the southern boundary of the site purchased by him should be amended. His witness Nilappagouda (Ex.74) stated that Fakirgouda had dictated the contents of the application which deft No.1 had made, that at that time every one in the village knew that Fakirgouda was not the owner of the site

towards the xkx south of the site of deft No.1. I therefore do not accept the finding of the learned Civil Judge on issue No.2 of the lower court that Fakiragouda was responsible for the description of the southern boundary of the site in the kabulayat (Ex.30) and that he had been guilty of mis-representation.. The learned Civil Judge had also relied upon a map which was produced on behalf of deft No.3. It is Ex.28. Ex.28 was prepared by a Circle Inspector on 30-12-1946 that is not only after the suit was filed but after deft No.3 was served with a notice under section 80 C.P.C. as a result of the Court's order requiring deft No.3 to be impleaded as a party. The document being prepared dring the pendency of the suit should not have been relied upon to show the position of the site and other matters incidental thereto.. The Court had appointed a pleader Mr.Hiregoudar to visit the site and to draw a map. That map is Ex.29 and it substantially corresponds to the map which the plff had filed with the plaint (Ex.66). I therefore hold that the plff has proved his title to and possession of the area A B C D in Ex.66 and that defts Nos. 1 and 2 should be restrained from encroaching over the area.

10. The other disputed area is on the eastern side of the open space purchased by deft No.1. It is the plff's case that one Irayya owned a portion of the site F E D J and his ancestor had taken a lease of some more space abutting the road from Government. and both these areas were purchased by the plff frpm xkm Irayya and his sons under the sale deed (Ex.37) dated 22-11-40. It is further the plff's case that the ancestor of Irayya had erected a house on the site and that that house fell in repairs and only the foundations of the walls could not be seen. It is his case that the wall of that house was in a line with the encroached area F H K J in Ex.66. When the court commissioner visited the site and prepared the map (Ex 29) he made a report which is Ex.28. In Ex.28 the commissioner pointed out that as there were no definite and fixed boundaries on any of the four sides, it was not an easy affair to take measurements exactly but he found that the lines H K F in his map (Ex.29) showed the existence of the walls of about

2141

one cubit though they were dilapidated. He also saw a pit N N P' P R a plinth clearly visible which he shows by the letters L K. He found that the distance between M and L was 33 feet and that between N and L as 50 feet 4 inches. If the point L represented the extremity of whole plinth that was visible no space to the east of L could have been treated as open space to be included in the area of the open space which was sold to deft No. There were also remnants of a wall at the points M Y Therefore what must have been sold to deft No.1 at the auction sale must have been the area between MY and LJ The description of the open site sold to deft No. 1 and as given in the Kabulayat (Ex.30) is as follows. Area 52 feet x 36 feet = 1872 sq.feet., bounded on the east by Patdayya's house which is evidently the site at under Irayya's house, on the west and north government open spaces and on the south the site of Fakirgouda's house When the two boundaries shown by the letters M L definitely showed marks of a wall and a plinth and the commissioner found that the breadth represented by M L was only 33 feet it must be assumed that the breadth given in the kabulayat (Ex.30) as 36 feet was clearly wrong . Similarly the commissioner found that the length of L.N was 50 feet 4 inches as against the length given in the kabulayat (Ex.30) as 52 feet.. Evidently the defts are relying upon the dimensions given in the Kabulayat (Ex.30) to assert their ownership over the two encroached areas to the south and the east of the defts plot. It may be that a mistake may have been made in giving measurements and that mistake is obvious from the fact that so far as the plinth breadth is concerned there are unmistakable signs provided by the marks of the old walls and the plinth at the points M and L that the open space could not have had the breadth of more than 33 feet and 36 feet as stated in the map (Ex.30) and the kabulatrai (Ex. 30). The learned Civil Judge

commented upon the failure of the plff to put in the kabulayat under which the ancestor of Irayya had taken the plot from the Government in about 1898. The plff's case is that Irayya had already constructed a house and Irayya had told him that some part of the plot was his own and some had been leased from the Government and he was selling the whole of the plot. The original kabulayat which Irayya's ancestor must have passed must have been in possession of the Government and it would have been easy for them to produce it to show what the dimensions of the plot leased from the Government in 1898 were. The fact that Irayya had constructed a building and the plinth of the building was still visible at the points L and M in Ex.29 would be sufficient to prove the extent of the land purchased by the plff from Irayya and his sons under the sale deed (Ex.87) so far as the western boundary of the plot is concerned. It is only the area within the boundary of these two plots that is in dispute in the suit and not further area beyond the road. I therefore hold that even as regards the strip F H K J shown in Ex.66 deft No.1 has failed to prove that this area was included in the plot which he had purchased from the Government under Ex.30. The result is that the plff has proved both his title to and possession of the areas alleged to have been encroached upon by defts Nos. 1 and 2 and he is entitled to the injunction sought by him.

O r d e r

The appeal is allowed. The decree of the lower court is set aside. Defts Nos. 1 and 2 are ordered to remove portions of any walls erected by them on the sites A K L M and F H K J as shown in Ex.66 and to hand over vacant possession of the same to the plff. If defts Nos. 1 and 2 fail to do so, the plff is at liberty to get possession of them through court at the costs of defts Nos. 1 and 2. A permanent injunction should issue against defts. Nos. 1 and 2 not to interfere with the plff's possession of the two areas. The plff should get the costs of the suit and of the appeal from defts Nos. 1 and 2 who should bear their own throughout.

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Deft No 2 who had partly supported defts Nos. 1 and 3 in the lower court, and who had also supported them in the appeal should bear their own costs throughout.

31st January 1950

sd. R.D. Pringle

District Judge

45

Suits.

Dharwar.

For Possession of a site shaded red in the sketch attached to the plaint and for ~~xxxx~~ consequential injunction.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 3488
Bombay Castle, 13th March 1950.

Read Government Resolution Legal Department No. 8397 ~~dated~~ 25t July 1949

In the Court of the Civil Judge, (Senior Division), Dharwar. Civil Suit No. 186 of 1945. Goolappa Kallappa Holiynnavar ... Plaintiff. Vs. The Province of Bombay and others. ... Defendants.	Letter from the District Government Pleader, Dharwar, No.189, da the 14th February 1950, for-warding

the uncertified copy of judgment and stating that the Civil Appea No.127 of 1948 in the suit noted in the margin was allowed by the District Judge, Dharwar, on 31st January 1950, when the following order was passed :-

" The appeal is allowed. The decree of the Lower Court is set aside. Defendants No.1 and 2 are ordered to remove portions of wall erected by them on the sites AKIM and FHKJ, as shown in Exhibit 66 and to hand over vacant possession of the same to the plaintiff. If defendants Nos. 1 and 2 fail to do so, the plaintiff is at liberty to get possession of them through Court at the cost of defendants No.1 and 2. A permanent injunction should issue against defendants Nos.1 and 2 not to interfere with the plaintiff's possession of the two areas. The plaintiff should get the costs of the suit and of the appeal from defendants Nos.1 and 2, who should bear their own throughout. Defendant No. 3 who had partly supported defendants No.1 and 2 in the Lower Court and had also supported them in the appeal should bear their own ~~xx~~ costs throughout. "

Resolution: The result of the appeal is recorded.

By order of the Governor of Bombay,

original R M Mehta

R.M.MEHTA.
Assistant Secretary to Government.

Issued on 13/3

To

The Commissioner, Southern Division.
The Collector of Dharwar.

KYK 8/3

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